
NO. 02-0427

In The Supreme Court of Texas

WEST ORANGE-COVE CONSOLIDATED I.S.D., ET AL.,

Petitioners,

v.

**FELIPE ALANIS, IN HIS OFFICIAL CAPACITY AS
THE COMMISSIONER OF EDUCATION, ET AL.,**

Respondents.

**BRIEF OF AMICUS CURIAE BRENHAM I.S.D. IN SUPPORT OF
PETITIONERS WEST ORANGE-COVE CONSOLIDATED I.S.D, ET AL.'S
PETITION FOR REVIEW**

**Paul Pomeroy
State Bar No. 16108000
3001 F/M 390 West
Brenham, Texas 77833
Telephone: (979) 836 1351
Telecopier: (979) 830 7282**

**John B. Neibel
State Bar No. 14869000
2300 Lyric Center Building
440 Louisiana
Houston, Texas 77002
Telephone: (713) 223 1000
Telecopier: (713) 222 6903**

**Attorneys for *Amicus Curiae*,
Brenham Independent School District**

IDENTITY OF PARTIES AND COUNSEL

In accordance with Rule 52.3(a) of the Texas Rules of Appellate Procedure, amicus curiae Brenham I.S.D. represents that the following is a list of all known parties and counsel who have an interest in the outcome of this case. This representation is made in order that the Judges of this Court may evaluate possible disqualification or recusal.

I. Plaintiffs/Appellants/Petitioners:

West Orange-Cove Consolidated I.S.D., Coppell I.S.D., La Porte I.S.D., and Port Neches-Groves I.S.D.

Counsel:

(Trial and/or Appellate)

George W. Bramblett, Jr.

Nina Cortell

Carrie L. Huff

Charles G. Orr

HAYNES AND BOONE, LLP

901 Main Street, Suite 3100

Dallas, Texas 75202-3789

W. Wade Porter

HAYNES AND BOONE, LLP

600 Congress Avenue, Suite 1600

Austin, Texas 78701-3236

Mark R. Trachtenberg

HAYNES AND BOONE, LLP

1000 Louisiana, Suite 4300

Houston, Texas 77002-5012

II. Defendants/Appellees/Respondents:

Felipe Alanis in his official capacity as the Commissioner of Education, the Texas Education Agency, Carol Keeton Rylander in her official capacity as Texas Comptroller of Public Accounts, and the Texas State Board of Education

Counsel:
(Trial and Appellate)

Greg Abbott, Attorney General for the State of Texas
Howard Baldwin, Jr., First Assistant Attorney General
Jeffrey Boyd, Deputy Attorney General for Litigation
Julie Caruthers Parsley, Solicitor General
Toni Hunter, Chief, General Litigation Division
Office of the Attorney General for the State of Texas
Post Office Box 12548, Capital Station
Austin, Texas 78711-2548

III. Alvarado Intervenors/Appellees/Respondents:

Alvarado I.S.D., Anthony I.S.D., Aubrey I.S.D., Bangs I.S.D., Bells I.S.D.,
Community I.S.D., Cooper I.S.D., Covington I.S.D., Detroit I.S.D., Early I.S.D.,
Fannindel I.S.D., Hutto I.S.D., Karnes City I.S.D., Kaufman I.S.D., Kirbyville I.S.D.,
Krum I.S.D., La Joya I.S.D., Mercedes I.S.D., Meridian I.S.D., New Boston I.S.D.,
Nocona I.S.D., Olfen I.S.D., Orange Grove I.S.D., Poteet I.S.D., Robinson I.S.D.,
Rosebud-Lott I.S.D., Rusk I.S.D., Southside I.S.D., Tornillo I.S.D., Trenton I.S.D.,
Tulia I.S.D., Uvalde I.S.D., Venus I.S.D., and Weatherford I.S.D.

Counsel:
(Trial and Appellate)

Randall B. Wood
Doug W. Ray
RAY, WOOD, FINE & BONILLA, LLP
2700 Bee Caves Road
Austin, Texas 78746

IV. Edgewood Intervenors/Appellees/Respondents:

Edgewood I.S.D., Ysleta I.S.D., Laredo I.S.D., San Elizario I.S.D., Socorro I.S.D., and
South San Antonio I.S.D.

Counsel:
(Trial and Appellate)

Albert H. Kauffman (withdrew after Court of
Appeals decision)
Leticia M. Saucedo
Nina Perales
Joseph P. Berra
Mexican American Legal Defense and
Educational Fund, Inc.
140 E. Houston Street, Suite 300
San Antonio, Texas 78201

V. Amicus Curiae:

David C. Hopson; Robert M. Windham; Albert D. and Mary H. Huddleston; Richard A. and Julie Ford; Vance Miller; Town North Centre, A Texas Joint Venture; Prestonwood Market Square Ltd., A Texas Limited Partnership; Central Forest SC Partners, A Texas Joint Venture; Preston Royal, A Texas Joint Venture; and Highland Park Shopping Village, A Texas Joint Venture

Counsel: Tom Thomas
KOLODEY, THOMAS & BLACKWOOD, L.L.P.
5910 N. Central Expressway, Suite 700
Dallas, Texas 75206

TABLE OF CONTENTS

Identity of Parties and Counsel.....	i
Table of Contents.....	iv
Table of Authorities.....	v
Rule 11 Disclosure and Record References.....	viii
Statement of Interest.....	1
Statement of The Case.....	2
Statement of The Jurisdiction.....	2
Issues Presented.....	2
Statement of Facts.....	2
Introduction and Summary.....	3
Argument and Authorities.....	4
1. The court can take judicial notice of the Texas Budgetary Crisis and its ramifications.....	4
2. Texas’ Budgetary Crisis and its effect on Public Education.....	7
3. Texas Public School Finance is confusing, unfair, lacks equity at the state level, and produces a great burden on property owners.....	19
Conclusion and Prayer.....	21
Certificate of Service.....	23
Appendix.....	27

TABLE OF AUTHORITIES

Black's Law Dictionary, (Revised 4t ed.), 1968, page 986

Zanto Peabody, *HISD endorses tax-cap relief*, HoustonChronical.com, March 13, 2003 at <http://www.chron.com/cs/CDA/story.hts/ec/issues/education/1816497>

Connie Mabin, *Rural schools also concerned about Robin Hood plan*, San Antonio Reporter-News, February 28, 2003, at <http://www.reporter-news.mysanantonio.com/index.cfm/xla=apwire&xlb>

Connie Mabin, *TEA cuts could kill 125 jobs*, San Antonio Reporter-News, February 26, 2003, at http://www.reprter-news.com/abil/nw_state/article/0,1874_ABIL_7974_1772187,00.html

Michelle M. Martinez, *Austin schools' administrative jobs up for cuts*, Austin American-Statesman, February 24, 2003, at http://www.austin360.com/auto_docs/epaper/editions/monday/metro_state_4.html

Melissa Renteria, *No quick fix for West Orange-Cove budget*, The Beaumont Enterprise, February 23, 2003, at <http://www.southeasttexaslive.com/site/news.cfm?newsid=7154382&BRD=2287&PAG=4>

Connie Mabin, *Budget writers to education chief: cut more*, Associated Press, February 21, 2003, at [www.caller.com/ccct/state_texas_news/article/0,1641,CCCT_876_1808862,00.html -45k -](http://www.caller.com/ccct/state_texas_news/article/0,1641,CCCT_876_1808862,00.html-45k-)

Ted Mandel, *My Turn*, The Kingwood Observer, February 19, 2003, at http://www.zwire.com/site/news.cfm?newsid=7116220&BRD=1575&PAG=461&dept_id=183549&rft=8

Austin American-Statesman Staff, *School finance forces compromises in Round Rock*, Austin American-Statesman, March 30, 2003, at http://www.austin360.com/statesman/editions/today/metro_state.html

Joey Daubin, *Waxahachie: School districts tightening belts Waxahachie: \$2.5 million shortfall*, The Ellis County News, February 19, 2003, at http://www.texasisd.com_1625.shtml

Paula Caballero, *H-E-B approves some of \$2.4 million in cutbacks*, Star-Telegram.com, February 19, 2003, at <http://www.dfw.com/mld/dfw/news/local/5213735.htm>

Ty Meighan, *School aid fund could expire*, Abilene Reporter-News, February 15, 2003, at http://www.reporter-news.com/abil/nw/state/article/0,1874.ABIL_7974_1747309,00.html

Kent Grusendorf, *Our children's education is not a game*, Dallas Morning News, February 12, 2003, at <http://www.humble.k12.tx.us/Our%20children.pdf>
Laura McWilliams, *JISD officials make plans to minimize budget shortfalls*, Jacksonville Daily Progress, February 27, 2003, at <http://www.jacksonvilleprogress.com/articles/2003/02/23/news/news01.txt>

Lucy Hood, *School funding equity vowed*, Austin American Statesman in MySA.com, February 19, 2003, at <http://www.news.mysanantonio.com/story.cfm?saen&xlb=180&xlc=95790&xld=>

Associated Press, *Groups cite cost of possible Robin Hood loss to local districts*, The Beaumont Enterprise in Southeast Texas Live.com, February 23, 2003 at <http://www.southeasttexaslive.com/site/news.cfm?newsid=7154620&BRD=2287&PAG=4>

Terry Pope, *School funding issue revisited*, Mineral Wells Index, 11-18-02 at http://www.mineralwellsindex.com/articles/2002/11/18/news/top_story/topstory01.txt

Glenn Evans, *Perry set to tackle school finance problem*, Longview News-Journal in News-Journal.com, February 16, 2003, at <http://www.news-journal.com/news/auto/feed/news/2003/02/16/1045370114.1669>

Jesse Wright, *Schools may have to recover more costs*, Brenham Banner Press, 2-29-03, (Brenham Banner Press, 2-29-03, at <http://www.banner-press.com/story159.shtml>

Brent Flynn, *Solomon's wants State to pay half of education costs*, Lewisville Leader, February 19, 2003, at <http://www.humble.k12.tx.us/Solomons%20wants%20state%20to%20pay%20half%20of%20education%20costs.pdf>

Alberta Phillips, *Overhaul needed, but for now, quick fixes will help*, Austin American Statesman, 9-01-2002 at http://www.austin360.com/aas/editorial/leg_78/0901schoolfinance.html

The Texas Education Agency, School District Tax rate data, 2003 edition at

Texas Education Agency at <http://www.tea.state.tx.us/perfreport/snapshot/>

RULE 11 DISCLOSURE STATEMENT

Brenham I.S.D. has paid all fees and expenses in connection with the preparation and filing of this *amicus curiae* brief.

RECORD REFERENCES

Brenham I.S.D. will use the record references utilized by Petitioners in their Brief on the Merits filed November 4, 2002.

In The Supreme Court of Texas

WEST ORANGE-COVE CONSOLIDATED I.S.D., ET AL.,

Petitioners,

v.

**FELIPE ALANIS, IN HIS OFFICIAL CAPACITY AS
THE COMMISSIONER OF EDUCATION, ET AL.,**

Respondents.

**BRIEF OF AMICUS CURIAE BRENHAM I.S.D. IN SUPPORT OF
PETITIONERS WEST ORANGE-COVE CONSOLIDATED I.S.D, ET AL.'S
PETITION FOR REVIEW**

TO THE HONORABLE THE SUPREME COURT OF TEXAS:

Brenham I.S.D. respectfully files this amicus curiae brief and shows the Court as follows:

STATEMENT OF INTEREST

This district is charged with the responsibility of educating all children in our district. This includes many children who are at risk; are economically disadvantaged; require special education; or require bilingual education.

The costs of these programs and services require more resources than the current school finance law provides. The legislature is not able to act, and may not be able to act unless this court requires it to act; or intervenes by requiring a funding system fair to all Texas children.

STATEMENT OF THE CASE

Brenham I.S.D. adopts the Statement of the Case set forth by the Petitioners in their Brief on the Merits filed November 4, 2002.

STATEMENT OF THE JURISDICTION

This court has jurisdiction over this case under Sections 22.001(a)(2) and 22.225(c) of the Texas Government Code for the reasons identified in the Petition for Review.

ISSUE PRESENTED

1. Does the current finance law provide equal and fair funding for all children?
2. If not, does the legislature have a responsibility to provide the efficient means for fair and equal funding?
3. When the legislature refuses or cannot act to provide an efficient means for fair and equal funding, is the Court a proper resort for relief for the school districts on fulfilling their responsibility?

STATEMENT OF FACTS

In the interest of brevity and to conserve the Court's time, Brenham I.S.D. adopts Petitioners' Statement of Facts

INTRODUCTION AND SUMMARY

Because of funding restrictions, restraints, and mandates by the Texas legislature that denies school districts an efficient means to provide fair and equal funding for its children, there is no equality of education for all children to meet the competitive world of the twenty first century.

Even after years of experience with Robin Hood, some school districts have over \$15,000 per student to provide an education while others have less than \$6,000. A district with over \$15,000 per student may have only one elementary school with less than 100 students whereas many with \$6,000 per student must provide a high school, junior high school, middle school, alternative schools, special education in addition to elementary schools and other, more expensive learning opportunities.

Brenham ISD believes the legislature has shown an inability and unwillingness to enact a method to provide school districts with an efficient means to provide a mandated fair and efficient education.

Therefore, the only resort most districts have is for this Court to intervene.

ARGUMENT AND AUTHORITIES

- 1. The Court can take judicial notice of the Texas Budgetary Crisis and its ramifications.**

Black's Law Dictionary gives the definition for "Judicial Knowledge" as "Knowledge of that which is so notorious that everybody, including judges, knows it, and hence need not be proved", citing Ex Parte Ferguson, 112 Tex. Cr. R.152, 15 S.W.2d. 650,652. Black's Law Dictionary, (Revised 4t ed.), 1968, page 986. The same source says of "Judicial Notice. The act by which a court in framing its decision will, of its own motion, and without the production of evidence, recognize the existence and truth of certain facts, which from their nature are not properly the subject of testimony, or which are universally regarded as established by common notoriety..." citing authorities. *Id.* And, this definition includes "historical events". *Id.* Moreover, Black's continues the definition by commenting, "The true conception of what is 'judicially known' is that of something which not, or rather need not be, unless the tribunal wishes it, the subject of either evidence or argument... The limits of 'judicial notice' cannot be prescribed with exactness, but notoriety is, generally speaking the ultimate test of facts sought to be brought within the realm of judicial notice..." *Id.*

The budgetary crisis currently facing Texas is an "historical event" and notorious and therefore is a proper subject of judicial notice. The extent, the depth, the effects and the ramifications of this budgetary crisis, particularly as they affect public school financing are illustrated in the Appendix to this brief, and are a part of the historical record of this crisis.

This lawsuit itself is a part of the continued interest that this Court has shown in public education and its opinions are a part of that historical record. This budgetary crisis is a continuing one, now exacerbated by the pledges of the current Republican Leadership in Texas to repeal the so-called “Robin Hood” legislation while at the same time merely proposing a return to the pre-Robin Hood regime, with no proposals for alternative means of financing public education in Texas. Indeed, the continuing crisis and the Courts’ long involvement seeking to achieve a solution for it, fit admirably in the additional comments Black’s Law Dictionary makes as follows:

“...in general, it (judicial notice) covers matters so notorious that a production of evidence would be unnecessary, matters which the judicial function supposes the judge to be acquainted with actually, or theoretically, and matters not strictly included under either of such heads... (citation omitted) *Id.* (Emphasis added).

Judicial notice is a ‘judicial function’ which allows the justices to recognize the reality of those matters which are notorious, but which, in fact, may be unknown to a given judge at a given moment. It includes matters with which a given judge is acquainted with only ‘theoretically’ so long as they are within the rubric of ‘notorious’. Thus, it is proper and necessary to the functioning of this Court that the judges take notice of the State of Texas’ budgetary crisis and recognize the dire straits facing our State. As this Court has said repeatedly, the Texas Constitutional duty imposed upon the Legislature is to provide for the general diffusion of knowledge by funding a fair and efficient system of public education.

The Republican Leadership has vowed to repeal Robin Hood.

The Republican Leadership has passed House Bill 5 in the House Public Education Committee. The Bill passed Tuesday, March 11, 2003. It would accomplish the Republican' plan by phasing out the Robin Hood School Finance Plan by September 2005. However, the Republican Plan House Bill 5, would add \$1.2 billion to school funding by means of an accounting device which would delay an August 2005 payment to school districts until September 2005 when fiscal year 2006 will have begun. Democrats questioned whether this accounting delay would really add \$1.2 billion to the school districts, particularly in light of the Republican led House Appropriations Committee's action in cutting about \$3 billion from the \$26 billion education budget. Dallas ISD Superintendent Mike Moses said, "If we simply take from one pocket to give to another, that raises serious questions." (Appendix. Tab 1) Jane Elliot, *School Aid Plan Makes Grade In Panel Vote*, Houston Chronicle, March 12, 2003.

Governor Perry and the Republican Chair of the House Public Education Committee, Rep. Kent Grusendorf argue that repeal of Robin Hood will force a special session this year (2003) at which time the Republican Leadership would plan to address the crisis. *Id.*

2. Texas' Budgetary Crisis and its effect on Public Education.

The current House Appropriations Committee is cutting state agency budgets by 12.5 percent. That amounts to about \$3 billion dollars for the current \$26 billion

education budget. Jane Elliot, *School Aid Plan Makes Grade In Panel Vote*, Houston Chronicle, March 12, 2003. (Appendix, Tab 1)

This cut is designed to erase a \$9.9 billion shortfall in the 2004-05 budget.

The current school finance system uses codes, identifiers, labels, and acronyms to mislead the public into thinking that school districts are receiving appropriate funds for the costs of education. However, the bottom line for every school district is the amount of money received from the state to educate the number of students walking into their classrooms. The current system supplants state dollars dedicated to public education leaving literally billions of dollars in the state's general revenue for "other" uses. Under the current system, there is no predetermined dollar amount a school district will receive for educating a "regular" student because the system uses weighted attendance and penalizes a school district with increasing property values. Therefore, any additional state aid a school district might receive for educating a "special" student is non-existent. When the public inquires into the amount of state aid provided at the local level, the fact is that dividing the number of students into the amount of state aid equals the average amount provided by the state. And the amount provided at the state level under the current system is diminishing while the cost of educating students continues to rise.

The current state of school finance in Texas is not rich versus poor. Every school district has poor students. It is about fairness and equality for all Texas public school children. School districts with poor minority students and rich Anglo students are cutting career and technology programs, eliminating the arts, slashing dropout prevention program

budgets, and the state's flagship academic programs are under fire as communities learn that state funds are diminishing and local taxes are at the allowable limit.

- Of the 1,041 Texas Independent School Districts, 414 have reached the allowable limit of \$1.50 on the local property tax. The Texas Education Agency, *School District Tax rate data*, 2003 edition at Texas Education Agency at <http://www.tea.state.tx.us/perfreport/snapshot/>
- Of the 1,041 Texas Independent School Districts, 570 have a tax rate of \$1.47 or higher. The Texas Education Agency, *School District Tax rate data*, 2003 edition at Texas Education Agency at <http://www.tea.state.tx.us/perfreport/snapshot/>
- Austin ISD will declare a financial emergency, eliminate 600 positions, and faces a \$51 million shortfall. Michelle M. Martinez, *Austin Schools' Administrative Jobs up For Cuts*, Austin American-Statesman, February 24, 2003, at http://www.austin360.com/auto_docs/epaper/editions/monday/metro_state_4.html
- The Texas Senate recognizes that adequacy and equity are an issue that must be addressed. Lucy Hood, *School Funding Equity Vowed*, Austin American Statesman in MySA.com, February 19, 2003, at <http://www.news.mysanantonio.com/story.cfm?la=saen&lb=180&lc=95790&ld=>

- Humble ISD faces a \$3.5 million shortfall due to student growth that will not be funded by the state. Ted Mandel, *My Turn*, The Kingwood Observer, February 19, 2003, at http://www.zwire.com/site/news.cfm?newsid=7116220&BRD=1575&PAG=461&dept_id=183549&rfi=8
- Graford ISD receives \$239 per student in state aid. Terry Pope, *School Funding Issue Revisited*, Mineral Wells Index, 11-18-02 at http://www.mineralwellsindex.com/articles/2002/11/18/news/top_story/topstory01.txt
- Brenham ISD faces another year of state fund reduction while student population increases. (Texas Education Agency at <http://www.tea.state.tx.us/perfreport/snapshot/>)
- Raymondville declares financial emergency. Associated Press, *Groups Cite Cost of Possible Robin Hood Loss to Local Districts*, The Beaumont Enterprise in Southeast Texas Live.com, February 23, 2003 at <http://www.southeasttexaslive.com/site/news.cfm?newsid=7154620&BRD=2287&PAG=4>
- Mineral Wells ISD fears that the state will not address the finance issue at the legislative level. Terry Pope, *School Funding Issue Revisited*, Mineral Wells Index, 11-18-02 at

- http://www.mineralwellsindex.com/articles/2002/11/18/news/top_story/topstory01.txt
- Local property taxes account for \$15 billion for public education, state taxes account for \$11 billion. Brent Flynn, *Solomon's Wants State to Pay Half of Education Costs*, Lewisville Leader, February 19, 2003, at
 - <http://www.humble.k12.tx.us/Solomons%20wants%20state%20to%20pay%20half%20of%20education%20costs.pdf>)
 - The state pays 41% for public education but the amount could be cut to 36% by 2004-2005. *Id.*
 - In Lewisville ISD, the state pays 13% of the costs of public education. *Id.*
 - The Legislative body is hesitant to correct the issue without court intervention. Connie Mabin, *Budget writers to education chief: cut more*, Associated Press, February 21, 2003, at www.caller.com/ccct/state_texas_news/article/0,1641,CCCT_876_1808862,00.html - 45k –
 - Laredo ISD does not believe that the state should rely on wealthy districts to support poor districts. (Dallas Morning News, 12-16-01 at
<http://www.dallasnews.com/archive/>)
 - Round Rock ISD will increase taxes, class sizes and charge a student fee for participation in athletics and fine arts because of a complicated finance system. Austin American-Statesman Staff, *School finance forces compromises in*

- Round Rock*, Austin American-Statesman, March 30, 2003, at http://www.austin360.com/statesman/editions/today/metro_state.html
- Klein ISD has a \$2 million deficit. (Houston Chronicle, 2-19-03 at <http://www.chron.com/content/archive/index.mpl>)
 - The finance system has shifted the burden to homeowners because the state's sales tax has not kept pace with growth. (Austin American Statesman, 9-01-2002 at http://www.austin360.com/aas/editorial/leg_78/0901schoolfinance.html)
 - In 1997, Governor Bush failed to persuade lawmakers to change the system. (Austin American Statesman, 2-09-03) at http://www.austin360.com/statesman/reader_services.html)
 - A Texas House Committee voted to end "Robin Hood". (Austin American Statesman, 2-09-03) at http://www.austin360.com/statesman/reader_services.html)
 - Houston ISD, facing a \$160 million shortfall will turn to the classroom for savings. (Houston Chronicle, 2-26-03) at <http://www.chron.com/content/archive/index.mpl>)
 - Jacksonville ISD will make cuts in transportation and slow construction projects because of uncertain aid from the state. Laura McWilliams, *JISD Officials Make Plans to Minimize Budget Shortfalls*, Jacksonville Daily Progress, February 27, 2003, at

<http://www.jacksonvilleprogress.com/articles/2003/02/23/news/news01.txt>

- West Orange-Cove ISD declares financial emergency and develops deficit reduction plan. (Beaumont Enterprise, 2-23-03) at <http://www.southeasttexaslive.com/site/news.cfm?newsid=7154382&BRD=2287&PAG=4>
- San Angelo ISD declares financial emergency. (Beaumont Enterprise, 2-23-03) at <http://www.southeasttexaslive.com/site/news.cfm?newsid=7154620&BRD=2287&PAG=4>
- Hurst-Euless-Bedford ISD approved a \$2.4 million budget-reduction plan for the 2003-04 school year. (Star Telegram, 2-19-03) The trustees of the Hurst-Euless-Bedford ISD were reported on February 19, 2003 to have voted to require central administrators to work as substitute teachers 16 days a year, reduce secondary school staff by 15.5 positions, eliminate planning periods for teachers and to reduce out of state staff travel by 80 percent. Paula Caballero, *H-E-B Approves Some of \$2.4 Million in Cutbacks*, Star-Telegram.com, February 19, 2003, at <http://www.dfw.com/mld/dfw/news/local/5213735.htm> (Appendix, Tab 2)
- (Ellis County News, 2-19-03) Waxahachie ISD faces a \$2.5 million shortfall and a defeat at the polls of its \$48 million bond election. The district could start charging its student athletes a \$100 fee to play sports and increase

- admission prices for the fans. Their staff has recommended charging students to ride the school bus and selling commercial advertising space on busses and rooftops. Joey Daubin, *Waxahachie: School Districts Tightening Belts* *Waxahachie: \$2.5 Million Shortfall*, The Ellis County News, February 19, 2003, at http://www.texasisd.com_1625.shtml (Appendix, Tab 3)
- Aldine ISD has a \$6 million deficit. (Houston Chronicle, 2-19-03) at <http://www.chron.com/content/archive/index.mpl>)
 - Cy-Fair ISD is \$7 million short. (Houston Chronicle, 2-19-03) at <http://www.chron.com/content/archive/index.mpl>)
 - Gov. Perry announces solution to school finance problem will not be found in current legislative session. (Longview News Journal, 2-16-03) at <http://www.news-journal.com/news/auto/feed/news/2003/02/16/1045370114.1669>)
 - Brenham ISD without the \$1.50 tax rate would have only \$1692 per student to spend. (Brenham Banner Press, 2-29-03) at <http://www.banner-press.com/story159.shtml>)

Northline Elementary School in Houston is facing the loss of its share in the statewide Investment Capital Fund, ICF. This is a program to finance putting parent and grandparents into a working relationship with teachers. For a modest investment, the program has had extraordinary success in vastly improving Northline's test scores, raising them at a rate higher than 30 percent above the average for Houston Independent School District schools. The ICF provided only \$50 thousand dollars per Northline school, but

its results are astonishing. John Schaff and Linda Range-Brown, *The True Cost of Education in Two Houston Schools*, Houston Chronicle, March 13, 2003, 31a

(Appendix, Tab 4)

The Houston Chronicle in an article dated March 13, 2003, says that HISD is bracing for deep budget cuts to offset its own deficit and to help close a state funding gap.

The article notes:

- 360 jobs cut.
- \$3 million cut in magnet programs.
- \$100 million budget shortfall in the current year.
- \$50-60 million estimated shortfall for next budget year.
- \$30 billion loss under cuts recommended in an education subcommittee.

(Appendix, Tab 5)

Rural schools are concerned about the GOP plan to end Robin Hood without a replacement. Republicans who represent rural school district have become unlikely allies of Democrats concerned about the GOP plan. “Eliminating the finance system without an alternative ‘throws school boards into chaos’ said Rep. Scott Hochberg, D-Houston.

Connie Mabin, *Rural Schools Also Concerned About Robin Hood Plan*, San Antonio Reporter-News, February 28, 2003, at

<http://www.reporter-news.mysanantonio.com/index.cfm/xla=apwire&xlb>

(Appendix, Tab 6)

According to Education Commissioner Felipe Alanis, the Texas Education Agency will follow his proposed budget and would cut 125 jobs, reduce money going to local districts by \$1.1 billion, delay purchase of textbooks and instructional material for kindergarten until 2006-07, eliminate some teacher training programs and cut funding for the reading and math initiatives championed by President Bush and Governor Rick Perry. Connie Mabin, *TEA Cuts Could Kill 125 Jobs*, San Antonio Reporter-News, February 26, 2003, at http://www.reprter-news.com/abil/nw_state/article/0,1874_ABIL_7974_1772187,00.html (Appendix, Tab 7)

The Austin American Statesman reported on Monday, February 21, 2003, that the Austin School District trustees will decide on whether to declare a financial emergency, to lead to cutting 60 administrative positions. They are searching for ways to close a \$54 million spending gap estimated for 2003-04. The Austin District is at the \$1.50 per \$100 of appraised property value and that has caused the problem. The Austin District must send \$161 million next year to school districts with relatively lower property value. Michelle M. Martinez, *Austin Schools' Administrative Jobs up For Cuts*, Austin American-Statesman, February 24, 2003, at http://www.austin360.com/auto_docs/epaper/editions/monday/metro_state_4.html (Appendix, Tab 8)

If Robin Hood is repealed, the recipient schools would lose \$1 billion a year. And those districts would have to raise their tax rates by an average of 24 cents per \$100 of value to make up the difference. Under Robin Hood, the Equity Center says, the 116 rich

school districts relinquish \$1 billion in property tax revenues each year. The West Orange-Cove Consolidated School District's recovery from its budget deficit could take years. They will be considering campus consolidation and staffing changes to find ways to save money. Melissa Renteria, *No Quick Fix For West Orange-Cove Budget*, The Beaumont Enterprise, February 23, 2003, at <http://www.southeasttexaslive.com/site/news.cfm?newsid=7154382&BRD=2287&PAG=4> (Appendix, Tab 9)

TEA, under pressure to find more savings, was looking at cutting some early childhood, after school, and dropout prevention programs so reported Associated Press writer Connie Mabin, on February 21, 2003. Connie Mabin, *Budget Writers to Education Chief: Cut More*, Associated Press, February 21, 2003, at www.caller.com/ccct/state_texas_news/article/0,1641,CCCT_876_1808862,00.html-45k – (Appendix, Tab 10) TEA had already found \$135 million, or a 14 percent cut in administrative costs. *Id.*

In a letter published on February 19, 2003, writer Ted Mandel noted that:

“Austin ISD, faced with a \$59 million shortfall proposed a budget for next year cutting out 60 positions, including 450 full and part-time teachers.” He goes on to point out:

West Orange-Cove ISD declared a financial emergency in January 2003.

Eanes ISD also declared a financial emergency, reviewing cuts eliminating teaching positions, charging students a fee for school buses and eliminating field trips for elementary schools.

Irving ISD is to cut 145 teaching positions next year.

Deer Park ISD is going to accept students from outside the district in order to earn more money.

Yet another casualty of the Texas budget crisis is the fund that supports teaching about the emerging telecommunications and infrastructure enterprises. This fund was created by the Texas Legislature in 1995 and given a ten-year life span. It is nearing the end of its current existence. To date, the fund, known as the Telecommunications and Infrastructure Fund, has pumped over \$1 billion into public schools, universities, libraries and health care facilities in Texas. The question now is will the fund survive the Texas Budgetary Crisis? Cash strapped public schools will be seriously hurt if the fund ends. Computers and data transmission are now essential to the public school teaching mission. But the telecommunication companies are fighting the continuation of the fund. They argue that other businesses should share in the State assessments made against their industry, the telecommunications companies. SBC has paid up to \$50 million a year into the fund. They do not pass the cost unto their customers. So, SBC wants to kill the fund. The legislature is thus faced with how to improve the fund, make the assessments more equally spread across industry lines, and assure its continued success in funding education in the public schools. Ted Mandel, *My Turn*, The Kingwood Observer, February 19,

2003, at

http://www.zwire.com/site/news.cfm?newsid=7116220&BRD=1575&PAG=461&dept_id=183549&rfi=8 (Appendix, Tab 11)

The Austin American Statesman noted that the Eanes ISD already is charging a fee of \$150 for students to participate in athletics or in fine arts programs. Lake Travis ISD is considering a \$200 fee for these activities. Austin American-Statesman Staff, *School Finance Forces Compromises in Round Rock*, Austin American-Statesman, March 30, 2003, at

http://www.austin360.com/statesman/editions/today/metro_state.html (Appendix, Tab 12)

3. Texas Public School Finance is confusing, unfair, lacks equity at the state level, and produces a great burden on property owners.

The State's answer is to force local school districts to depend more on local taxes and less on State revenue. Because of the State's lack of attention in funding public education, local taxes have increased. While State leaders promise "no new taxes", the State imposes a public school financial system that forces new taxes every year, and the State establishes a ceiling which limits local revenue. In essence, the State does impose a property tax.

"Today's school finance code is a hodgepodge of arcane formula adjustments and calculations tweaked over the past few decades to reflect various political interests. The formulas are so complex that only a handful of experts understand how they work.

Kent Grusendorf, *Our Children's Education is Not a Game*, Dallas Morning News, February 12, 2003, at <http://www.humble.k12.tx.us/Our%20children.pdf>.

(Appendix, Tab13)

“Robin Hood” has not provided the desired results in terms of equity for all public school districts. The system relies too heavily on property values that supplant state revenue and in effect “poor” school districts have not gained in wealth since the inception of the plan.

The current “Robin Hood” system does not meet the standards of equity, adequacy and fairness. It produces a state-imposed ceiling on the revenue districts can raise by imposing a cap of \$1.50 on the local property tax. The number of school districts at \$1.50 is 414. The number of school districts in the range of \$1.47 to \$1.50 is 570. The number of school districts in the \$1.45 to \$1.50 range is 615. The number of school districts in the state is 1041. It creates a central state agency that collects local revenue from “wealthy” districts and distributes that revenue to “poor” districts. It does not provide enough revenue for a “basic” education. It distributes state revenue through an archaic system that is confusing and misleading. The system was never intended to be permanent and the time has come for intervention.

Moreover, the Robin Hood system can produce an excess of wealth available to the few “Rich Robin Hood Districts”. Most Robin Hood districts are like the Dew ISD in Freestone County. If Robin Hood were eliminated, Dew ISD, with only 67 students in one elementary school, would receive approximately \$24,500 per student. Even after

Robin Hood, DEW received \$1,570,923 in the school year 2000-2001 for its 67 students or about \$23,000 per student. This contrasts with Brenham ISD, and most other Texas school districts, who have approximately \$6,000 per year per student, (<http://penick.tea.state.tx/SchoolDistrictLocator/ISD/dew.asp>) (Appendix, Tab 14). Most other ISDs have to operate high schools and bear the cost of classes with laboratories, provide fine arts training, vocation training, operate debate and speech programs and of course, hire football and other athletic coaches, (<http://penick.tea.state.tx/SchoolDistrictLocator/ISD/brenham.asp>) (Appendix, Tab 15). The disparity in funding support between the school districts is astounding. It is also unequal and unfair. The bottom line issue is that of fairness and equality of opportunity. That is the constitutional commandment. That is what the Court is asked to enforce.

PRAYER

Brenham Independent School District respectfully requests that this Court continue its jurisdiction over this litigation and appoint a Master to see to it that the Texas Legislature does its constitutional duty to ensure that a fair, equitable, and efficient public school financing system be enacted insuring that the standard of “the general diffusion of knowledge” will be accomplished. In the alternative, your Amicus Curiae suggests that the

Court should rule on the issues involved; or, again alternatively, should reverse the Court of Appeals and remand this case for trial.

Respectfully submitted,

Paul Pomeroy
State Bar No. 16108000
3001 F/M 390 West
Brenham, Texas 77833
Telephone: (979) 836 1351
Telecopier: (979) 830 7282

John B. Neibel
State Bar No. 14869000
2300 Lyric Center Building
440 Louisiana
Houston, Texas 77002
Telephone: (713) 223 1000
Telecopier: (713) 222 6903

Attorneys for *Amicus Curiae*,
Brenham I.S.D.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of *Brief of Amicus Curiae Brenham I.S.D.* has been served on the following counsel of record in accordance with the Texas Rules of Appellate Procedure on this 21st day of March, 2003:

Attorneys for Felipe Alanis in His Official Capacity as the Commissioner of Education, the Texas Education Agency, Carol Keeton Rylander in Her Official Capacity as Texas Comptroller of Public Accounts, and the Texas State Board of Education:

Greg Abbott, Attorney General for the State of Texas
Howard Baldwin, Jr., First Assistant Attorney General
Jeffrey S. Boyd, Deputy Attorney General for Litigation
Julie Caruthers Parsley, Solicitor General
Toni Hunter, Chief, General Litigation Division
Post Office Box 12548, Capital Station
Austin, Texas 78711-2548

Via Certified Mail

Attorneys for the Alvarado Respondents:

Randall B. Wood
Doug W. Ray
RAY, WOOD, FINE & BONILLA, LLP
2700 Bee Caves Road
Austin, Texas 78746

Via Certified Mail

Attorneys for the Edgewood Respondents:

Leticia M. Saucedo
Nina Perales
Joseph P. Berra
MALDEF
140 E. Houston Street, Suite 300
San Antonio, Texas 78201

Via Certified Mail

Attorneys for the Plaintiffs/Appellants/Petitioners:

West Orange-Cove Consolidated I.S.D., Coppell I.S.D., La Porte I.S.D., and Port Neches-Groves I.S.D.

Counsel:

George W. Bramblett, Jr.

(Trial and/or Appellate) Nina Cortell
Carrie L. Huff
Charles G. Orr
HAYNES AND BOONE, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202-3789

W. Wade Porter
HAYNES AND BOONE, LLP
600 Congress Avenue, Suite 1600
Austin, Texas 78701-3236

Mark R. Trachtenberg
HAYNES AND BOONE, LLP
1000 Louisiana, Suite 4300
Houston, Texas 77002-5012

Paul Pomeroy
State Bar No. 16108000
3001 F/M 390 West
Brenham, Texas 77833
Telephone: (979) 836 1351
Telecopier: (979) 830 7282